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John L. Rogitz, Esq. ROGITZ & ASSOCIATES 750 "B" Street, Suite 3120 San Diego, CA 92101			JOHNSON, BLAIR M	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/062,655

Filing Date: February 01, 2002

Appellant(s): DOMEL ET AL.

John Rogitz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/9/07 appealing from the Office action mailed 3/20/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,909,093	van Dinteren et al	6-1999
6,486,793	Buccola	11-2002

DE 3438842 A1 German patent published 5/1986 (translation provided)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over van Dinteren et al in view of either Buccola or German 3,438,842.

Van Dinteren et al discloses a battery powered (column 5, line 32) window covering which is manipulated by an IR remote control system and which is concerned with saving power and addresses this issue by providing a well known sleep mode for the receiver (column 5, lines 43-61). Buccola also discloses a remote control unit for actuating an operator, in this case a door lock. Buccola discloses an alternative means for saving battery power which serves his receiver system. Specifically, referencing Fig. 3 and column 4, lines 22-45, a series of amplifiers 36,42, precede passage of the signals to each of a separate low frequency detector and a high frequency detector, the low frequency detector signaling the wake-up circuit while the high frequency detector signals the data receiving circuit of the microprocessor. The presence of the two frequency detectors indicates that two signals are produced. The wake up signal saves power drain and “prepares”, i.e. wake up, the data receiver. One of ordinary skill in the art would have looked to Buccola to find an alternative, and superior, means for saving the battery power of van Dinteren et al and would have found such a combination obvious.

German ‘842 also provides a system that uses two signals. His IR data signal is activated by an “additional receiver”. While ‘842 does not use an IR or RF emitter/receiver, he clearly discusses such in his discussion of the prior art and generally makes it known that he proposes a visible light signal as it provides certain

improvements over the IR or RF. It would have been obvious to combine '842 with van Dinteren to achieve the power savings discussed above and to further use IR or RF.

(10) Response to Argument

The present device provides a remote controlled window covering. In the past, the receiver associated with the window covering has either remained on continuously, using (wasting) energy, or pulsed on and off, thereby saving some energy. See the "Background", page 1 of the spec. The present device solves this energy loss problem by providing a signal to the receiver that is of a reduced frequency, thereby using less energy. The receiver converts the reduced frequency to a greater frequency to operate the window covering.

Van Dinteren et al provides a conventional window covering, much as discussed in the background of the present spec. Buccola discloses a remote control lock system.

Appellant states that the combination of van Dinteren et al and Buccola "is improper on two easily understood grounds", page 4. The first reason presented is that Buccola is nonanalogous to the window covering art. Secondly, there is no suggestion to combine these two references. Regarding the first reason, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the particular problem is the conservation of energy used by the electrical components. However, Buccola provides the details of the receiver, frequencies, etc., as advanced above in the

rejection and further specifically states that “the wake up signal output 50 prevents the unnecessary drain of power from power supply 30 and prepares infrared communication microprocessor 38 to receive data from high frequency detector 48 along a data input line 52”, column 4, lines 41-45. Consequently, the “particular problem” is solved by Buccola and is therefore properly combined with van Dinteren et al. Appellant maintains that the particular problem is not energy saving but energy saving for window coverings, thereby obviating Buccola. However, such is clearly a too-narrow interpretation of this analogous art rational. Additionally, Buccola clearly and explicitly provides the motivation to combine these two references, thereby overcoming Appellant’s second argument. Furthermore, in KSR, the Supreme Court stated:

“When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.”, and that when considering obviousness of a combination of known elements, the operative question is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.”

Appellant further argues that there is not rationally for combining the circuitry of these two references. However, such is an argument that suggests that a “physical

incorporation" of the references is proposed by the Examiner, which is not the case. No novel circuitry is presented and the Examiner is merely proposing that providing the known remote control system of van Dinteren et al with a energy saving device of another remote control system would have been obvious.

Similar arguments are made regarding the German reference, used in place of Buccola in an alternative rejection. While German may not propose an IR or RF signal, he clearly teaches that such is commonly used in the art, even if he is attempting to improve on this system, thereby clearly indicating that such is common knowledge.

Consequently, the combination of references as presented by the Examiner clearly includes analogous art combined as suggested by the references themselves and as would have been within the purview of one of ordinary skill in the art and the rejections should be affirmed.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Blair M. Johnson/

Conferees:

Meredith Petrvick /mcp/

Katherine Mitchell /K. W. M./